No. 98-970

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

WILLEM RIDDER ET AL., PETITIONERS,

v.

OFFICE OF THRIFT SUPERVISION, ET AL.

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED BY REPLY

Do petitioners lack standing to challenge the two OTS orders which deny payment to them of attorneys fees and costs of defense because petitioners were not served with the original OTS Temporary Order and are not parties named in the heading of the two subsequent OTS Orders denying payment to them?

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WILLEM RIDDER ET AL., PETITIONERS,

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OFFICE OF THRIFT SUPERVISION ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION

JURISDICTION

Petitioners seek certiorari under 28 USC §1254(1). This reply brief is filed under Supreme Court Rule 15.6.

STATEMENT

The Solicitor General asserts that petitioners Ridder, Merkle, Hurst and DeVany lack standing to bring action against the OTS on the two OTS orders denying CityFed Financial Corporation leave to pay them attorneys fees and costs of defense ordered by the Third Circuit because "they have not been served with the [original] Temporary Order [No. AP 94-27 dated June 2 1994] and are not *parties* to the administrative proceeding." (Brief for Respondents in Opposition p 7)[Emphasis in original].

ARGUMENT

The Solicitor General's contention neglects the Supreme Court's definition of standing. As stated by Chief Justice Warren in *Flast v. Cohen*, 392 US 83 at 99 (1968):

> The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 US 186, 204 (1962).

Justice Scalia summarized the requirements for standing

in *Lujan v Defenders of Wildlife*, 504 US 555 at 560-561 (1992):

> Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest which is (a) concrete and particularized, see id. [*Allen v. Wright*, 468 US 737(1984)] at 756; *Warth v. Seldin*, 422 US 490, 508 91975); *Sierra Club v. Morton*, 405 US 720, 740-741 (1972); and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" *Whitmore [v. Arkansas*, 495 US 149 (1990)] at 155 (quoting *Los Angeles v Lyons*, 461 US 95, 102 (1983)). Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Organization*, 426 US 26, 41-42 (1976). Third, it must be "likely," as opposed to merely "speculative" that the injury will be "redressed by a favorable decision." *Id* at 38, 43.

Petitioners meet all three requirements of standing as outlined by the Supreme Court. The Solicitor General's observation that Ridder, Merkle, Hurst and DeVany were not *parties* named in the heading of the OTS Orders 95-32 dated August 18 1995 and 96-12 dated April 8 1996 emphasizes the denial of due process of law to petitioners: CityFed *opposed* making payment to petitioners. The two OTS orders cited deal

only with the right of petitioners to recover their attorneys fees and costs of defense from CityFed Financial. The only parties *injured* by the OTS orders were petitioners. CityFed Financial was *benefitted* by the OTS orders refusing payment to petitioners.

The Solicitor General contends that CityFed Financial's right to appeal in the indefinite future - when (if ever) the OTS completes its hearings - somehow provides due process of law to petitioners Ridder, Merkle, Hurst and DeVany who have been denied their adjudicated right to recover attorneys fees and costs of defense. But CityFed Financial got from the OTS exactly what it wanted - an order that CityFed Financial did *not* have to pay attorneys fees and costs of defense to Ridder, Merkle, Hurst and DeVany.

The OTS contention that the CityFed Financial right of appeal in the indefinite future provides due process to Ridder, Merkle, Hurst and DeVany defies logic, common sense[1] and the Supreme Court precedents defining standing.

CONCLUSION

For the reasons stated the Supreme Court should reject the Solicitor General's contention that petitioners lack standing to challenge the OTS orders and grant the petition for certiorari.

Dated February 10 1998

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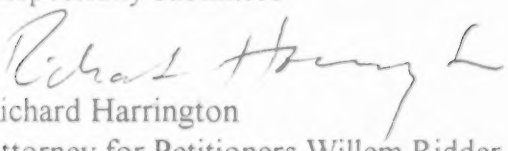
[1] "They [the poor] have to labor in the face of the majestic equality of the law, which forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." Anatole France, *Le Lys rouge* (1894) ch 7.

Respectfully submitted



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